

No.11822

United States
Circuit Court of Appeals
For the Ninth Circuit.

EMANUEL STAVROS HOUVARDAS,
Appellant,

vs.

I. F. WIXON, District Director of Immigration
and Naturalization,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

MAR - 4 1948

PAUL P. O'BRIEN,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

FREITAS, DUFFY & KEATING,

Freitas Building,
San Rafael, California,

Attorneys for Petitioner and Appellant.

FRANK J. HENNESSY,

United States Attorney,
Northern District of California,
Post Office Building,
San Francisco, California,

Attorney for Respondent and Appellee.

In the Southern Division of the United States
District Court, in and for the Northern District
of California

No. 27406-R

In the Matter of

EMANUEL STAVROS HOUVARDAS,

On Habeas Corpus

(San Francisco Immigration File No. 12020/32327)

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable, the Southern Division of the
United States District Court, for the Northern
District of California:

The petition of Emanuel Stavros Houvardas respectfully shows:

I.

That the petitioner is a native of Greece, having arrived in the United States of America at the age of eighteen years on the Steamship "King Albert" in the month of March or April, 1912, at the Port of New York, N. Y., and was duly admitted at said time for permanent residence in the United States by the United States Immigration authorities at said Port;

II.

That immediately after the said arrival and clearance by said Immigration authorities, as aforesaid, your petitioner proceeded to the State of Cali-

ifornia and ever since the month [1*] of March or April, 1912, has resided continuously in the State of California, and has resided continuously within the United States for thirty-five years last past, from said time of entry up to and including the present date;

III.

That your petitioner is now unlawfully in the custody of I. F. Wixon, District Director of Immigration and Naturalization, for the District of San Francisco, at No. 630 Sansome Street, San Francisco, California, under and pursuant to an Order of Deportation issued March 18, 1946, whereby your petitioner is ordered deported to the Island of Samos, Greece; that your petitioner is informed and believes, and therefore avers the fact to be, that said Order charges that your petitioner is subject to deportation under the Act of February 5, 1917, in that he was after May 1, 1917, sentenced to a term of imprisonment more than once for a term of one year or more for the commission, subsequent to his entry, of crimes involving moral turpitude;

IV.

That on or about the 27th day of January, 1939, in the Superior Court of the State of California, in and for the County of Los Angeles, in proceedings numbered 74489, your petitioner was found guilty as charged in each of two counts of the information filed against him and his application for probation and the pronouncing of judgment and sentence were

*Page numbering appearing at foot of page of original certified Transcript of Record.

set for February 14, 1939. That on said last mentioned date the Court in said matter pronounced judgment against your petitioner as follows:

“No legal cause appearing why judgment should not be pronounced, the Court pronounces judgment and sentence as to Counts 1 and 2 of the information as follows: Defendant is sentenced to the California State Prison at San Quentin on each of said counts for the term prescribed by law. These sentences are entered in Judgment Book No. 39, Page 397, and are ordered [2] to run Concurrently.

Execution of sentences is suspended and defendant is placed on probation for a period of five years under the following conditions: Defendant must serve the first ten months of his probationary period in the County Jail. Defendant must pay a fine of \$200 and must obey all laws.”

V.

That thereafter and on or about the 14th day of April, 1942, in the Superior Court of the State of California, in and for the County of Fresno, in proceedings numbered 10714 your petitioner, after the entry of his plea of guilty as charged in an information theretofore filed against him was by said Court punished by imprisonment in the State Prison of the State of California at San Quentin until legally discharged;

VI.

That thereafter and on or about the 28th day of April, 1942, the said Superior Court in and for the County of Los Angeles, in said proceedings numbered 74489, made and entered the following order, to-wit:

“Probation having been heretofore revoked, the sentences imposed on February 14, 1939, committing this defendant to the California State Prison at San Quentin for the term prescribed by law as to each of Counts 1 and 2, Concurrently, are placed into full force and effect. These sentences are ordered to run Concurrently with State Prison sentence pronounced in Fresno County, which defendant is now serving.”

VII.

That thereafter your petitioner was received by the Warden of the said State Prison at San Quentin, California, in execution of the sentence imposed upon him by the Superior Court of the State of California, in and for the County of Fresno, as aforesaid, and by virtue of the said order of the Superior Court of the State of California, in and for the County of Los Angeles, revoking said Order of Probation; the said [3] sentences from the said Superior Court of Los Angeles County to run concurrently with said prison sentence pronounced in the said Superior Court of Fresno County under which commitment the defendant was received by the said Warden as aforesaid at said prison on April 15, 1942;

VIII.

That thereafter at a meeting of the State Board of Prison Terms and Paroles, California State Prison, San Quentin, California, the said Board on March 22, 1944, made and entered the following order:

“Whereas, said prisoner was heretofore sentenced to be confined in the State Prison of the State of California, and was received by the Warden of the State Prison at San Quentin, California, in execution of his sentence, on the 15th day of April, 1942; and

“Whereas, said prisoner has served that portion of his time as is required, and the Board of Prison Terms and Paroles (the Board that has been given the authority so to do) has duly examined and considered all of the particulars of his case;

“Now Therefore, It Is Hereby Resolved and Determined by the Board of Prison Terms and Paroles that the said person (prisoner) shall be confined in the State Prison 10 yrs. & 10 Yrs. & 10 Yrs. CC. from and after the date on which he was received by said Warden as aforesaid, provided that there shall be deducted from said length of time of confinement the aggregate of all time credits provided for by law which the prisoner shall have earned and been allowed and not forfeited.

“Further Resolved, that in case any convicted person undergoing sentence in any of

the state prisons commits any infractions of the rules and regulations of the prison board, or escapes while working outside such prison under the surveillance of prison guards, the Board may revoke any order theretofore made determining the length of time such a convicted person shall be imprisoned, and make a new order determining such length of time not exceeding the maximum penalty provided by law for the offense for which he was convicted, unless the sentence be sooner terminated by commutation or pardon by the governor of the state.

“Further Resolved, that the said prisoner shall be allowed to go upon parole, according to the law governing parole, for and during: when served half time on Fresno Co. Commitment unless the Board shall hereafter otherwise determine.

“Attest:

----- ,

Secretary,

WARD J. ESTELLE,

Asst. Secretary.” [4]

IX.

That thereafter and on the 23rd day of January, 1945, your petitioner was released from said State Prison at San Quentin on parole, for the crimes under which he is undergoing sentence, for a period of three calendar years, which said parole shall expire on January 23, 1948;

X.

That pursuant to the laws of the United States respecting the deportation of aliens convicted of crimes involving moral turpitude, it is provided that no alien convicted as aforesaid shall be deported until after the termination of his imprisonment. That the imprisonment of your petitioner has not as yet terminated because your petitioner is still on parole from said State Prison and is under the authority, supervision and direction of the Parole Officer of the State of California, and has been and is now currently subject to all of the rules and regulations of said Parole Officer; and your petitioner's imprisonment will not be terminated until the completion of his term of parole on January 23, 1948;

XI.

That pursuant to the laws of the United States respecting the deportation of aliens convicted of crimes involving moral turpitude, it is provided that said laws shall not apply to those persons who have been pardoned for their crimes; that, in this connection, heretofore and on or about the 12th day of September, 1946, your petitioner, acting through his then attorney, sought to make application for a pardon to Honorable Earl Warren, Governor of the State of California; that your petitioner is informed and believes, and therefore avers the fact to be, that the said Governor would refuse to receive, entertain or act upon any application for said pardon unless the same be in conformity [5] with

the Procedure for Restoration of Rights and Application for Pardons as set forth in the provisions of Sections 4852.01 to 4852.2, inclusive, of the Penal Code of the State of California; that your petitioner does not at this time come within the provisions of Section 4852.06 of the said Penal Code which provides, among other things, as follows:

“No such petition shall be filed until and unless the petitioner has continuously resided, after leaving prison, in the county in which it is filed for a period of not less than three years immediately preceding date of filing the petition . . .”;

in this connection, your petitioner alleges that upon his release from said San Quentin Prison on January 23, 1945, he became and ever since has been a resident of the County of Marin, State of California, and since his release from said prison has lived an honest and upright life, and has conducted himself soberly and industriously and morally and has in all respects obeyed the laws of the land;

XII.

That the rights of your petitioner herein, to-wit, the right to apply for a pardon, have not been exhausted and are still open and available to him but your petitioner by reason of said detention and threatened deportation is being denied the right to apply for said pardon; that your petitioner therefore is powerless at this time to assert his rights in the matter of applying for said pardon and may

not legally assert the same until on or after January 23, 1948 when he shall then have been a continuous resident of the County of Marin, State of California, for at least three years from the time of his release from said State Prison;

XIII.

That your petitioner is informed and believes and therefore avers the fact to be that he is to be removed from [6] the jurisdiction of the above entitled Court by said District Director on the 11th day of July, 1947, for removal to some unknown port of embarkation on the east coast of the United States, there to be placed aboard a vessel for deportation to Greece unless otherwise restrained by this Honorable Court;

XIV.

That the hearing and proceedings had in the matter of the deportation of your petitioner and the action of the Immigration and Naturalization authorities and said District Director thereof ordering your petitioner to be deported, as aforesaid, were and are in excess of the powers and jurisdiction conferred upon them and are in excess of the authority committed to them by the Statutes and Constitution of the United States in such cases made and provided;

XV.

That your petitioner has not in his possession the file of the proceedings before the said District Director or the Commissioner of Immigration at

Philadelphia, Pennsylvania; that the original immigration records, including the findings and decision in the matter are on file with the said District Director, by reason of which the records are not now available to your petitioner; that your petitioner stipulates that as soon as said records are made available the same may be filed in and made a part of the proceedings herein;

XVI.

That it is the intention and purpose of the said District Director to deport your petitioner at once, and unless this Honorable Court intervenes to prevent said deportation your petitioner will be unlawfully deprived of his residence within the United States of America;

Wherefore, your petitioner prays that a Writ of Habeas Corpus issue as prayed for directed to the District Director of Immigration and Naturalization directing him to hold the body of your petitioner within the jurisdiction of this Court and to present the body of your petitioner before this Court at a time and place specified in the order, together with the time and cause, if any he has, of his detention so that the same may be inquired into to the end that your petitioner may be restored to his liberty and go hence without delay; and that the Court release the said petitioner during this proceeding upon such bail as this Honorable Court shall deem meet and proper. Your petitioner here-

tofore has been permitted his liberty by the United States Immigration Authorities on bail of \$500.00.

Dated this 10th day of July, 1947.

FREITAS, DUFFY &
KEATING,
By JEROME A. DUFFY,
Attorneys for Petitioner.

United States of America,
State of California,
City and County of San Francisco—ss.

Emanuel Stavros Houvardas, being first duly sworn, deposes and says:

That he is the petitioner named in the foregoing Petition for Writ of Habeas Corpus; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are therein stated on information and belief, and as to those matters that he believes it to be true.

/s/ EMANUEL STAVROS
HOUVARDAS.

Subscribed and sworn to before me this 10th day of July, 1947.

[Seal] J. ELEANOR JONES,
Notary Public in and for said City, County and State.

[Endorsed]: Filed July 10, 1947. [8]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

Good Cause Appearing Therefore and upon reading the verified petition on file herein,

It Is Hereby Ordered that I. F. Wixon, District Director of Immigration and Naturalization for the District of San Francisco, appear before the above entitled Court on the 21st day of July, 1947, at the hour of 10:00 o'clock a.m. of said day, to show cause, if any he has, why a Writ of Habeas Corpus should not be issued as prayed for, and that a copy of this Order be served upon the said District Director of Immigration and Naturalization, and that a copy of the Petition and said Order be served upon the United States Attorney for his District, his representative herein.

And It Is Further Ordered that Emanuel Stavros Houvardas, the petitioner herein, be not removed from the [9] jurisdiction of this Court and that he be enlarged on bond in the sum of \$1000.00 pending this hearing and until further orders herein.

Dated this 10th day of July, 1947.

MICHAEL J. ROCHE,

United States District Judge.

Bond in amount of \$1000 consented to.

FRANK J. HENNESSY.

By JAMES T. DAVIS,

Asst. U. S. Atty.

[Endorsed]: Filed July 10, 1947. [10]

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

Comes now I. F. Wixon, as District Director, United States Immigration and Naturalization Service, Port of San Francisco, and for cause why a writ of habeas corpus should not issue herein, shows:

I.

That the person in whose behalf the petition for writ of habeas corpus was filed, who is also known as Emanuel Stavros Houvardas, is detained by respondent, I. F. Wixon, as District Director of United States Immigration and Naturalization Service, Port of San Francisco, California, under and by virtue of a warrant of deportation duly and regularly issued on the 18th day of March, 1946, by the Attorney General of the United States after a hearing duly and regularly held before an Immigrant Inspector of the United States.

II.

That a true copy of said warrant of deportation and the original record of the entire proceedings pertaining thereto are annexed hereto and made a part hereof as Respondent's Exhibit "A."

Wherefore, Respondent prays that the petition for writ of habeas corpus herein be denied.

/s/ F. F. WIXON,

District Director, Immigration and Naturalization Service, Port of San Francisco, California.

[Endorsed]: Filed Aug. 15, 1947. [11]

[Title of District Court and Cause.]

ORDER GRANTING MOTION TO SET ASIDE
SUBMISSION, DISCHARGING ORDER
TO SHOW CAUSE, TERMINATING RE-
STRAINING ORDER, AND DENYING
PETITION FOR WRIT OF HABEAS
CORPUS

The Motion of the Petitioner to set aside the submission of the above entitled matter to permit the introduction of evidence not before the Board of Immigration Appeals of the Department of Justice at the time of the making of its Findings of Fact and Conclusions of Law, is granted.

The restraining order issued by this Court on July 10, 1947, is hereby terminated and the Order to Show Cause issued by this Court on the same date is discharged.

The Petition for a writ of habeas corpus is denied.

Dated this 4th day of November, 1947.

MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed Nov. 4, 1947. [12]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the Above Entitled Court, to I. F. Wixon, District Director of Immigration and Naturalization, and Frank J. Hennessy, Esq., United States Attorney, His Attorney:

You and Each of You Will Please Take Notice that Emanuel Stravros Houvardas, the petitioner in the above entitled matter, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the order and judgment rendered, made and entered on November 4, 1947, denying the Petition for Writ of Habeas Corpus filed herein.

Dated November 4, 1947.

FREITAS, DUFFY &
KEATING,

By JEROME A. DUFFY,
Attorneys for Petitioner.

[Acknowledgement of receipt of service.]

[Endorsed]: Filed Nov. 4, 1947. [13]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby Ordered that the Appellant herein may have to and including January 23, 1948, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated December 11, 1947.

MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed Dec. 11, 1947. [14]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

To the Clerk of the United States District Court
above named:

You are respectfully requested to prepare and file with the Clerk of the Circuit Court of Appeals, Ninth Circuit, that portion of the record in the above entitled matter as follows:

1. Petition for Writ of Habeas Corpus;
2. Order to Show Cause;
3. Return to Order to Show Cause;
4. Order Granting Motion to Set Aside Submission, Discharging Order to Show Cause, Terminating Restraining Order, and Denying Petition for Writ of Habeas Corpus;
5. Notice of Appeal;
6. All exhibits introduced in evidence for and on behalf of the petitioner above named.

Dated December 12, 1947.

FREITAS, DUFFY &
KEATING,
By WALTER F. FREITAS,
Attorneys for Petitioner.

(Affidavit of Service by Mail.)

[Endorsed]: Filed Dec. 13, 1947.

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 16 pages, numbered from 1 to 16, inclusive, contain a full, true, and correct transcript of the records and proceedings in the matter of Emanuel Stavros Houvardas, on Habeas Corpus, No. 27406-R, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$3.00 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 30th day of December, A. D. 194.....

[Seal]

C. W. CALBREATH,
Clerk,

By /s/ M. E. VAN BUREN,
Deputy Clerk.

[Endorsed]: No. 11822. United States Circuit Court of Appeals for the Ninth Circuit. Emanuel Stavros Houvardas, Appellant, vs. I. F. Wixon, District Director of Immigration and Naturalization, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed December 30, 1947.

/s/ PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 11822

In the Matter of

EMANUEL STAVROS HOUVARDAS,
On Habeus Corpus

(San Francisco Immigration
File No. 12020/32327)

STATEMENT OF POINT ON APPEAL AND
DESIGNATION OF RECORD ON APPEAL

To the Clerk of the United States Circuit Court
of Appeals for the Ninth Circuit:

Pursuant to Rule 19, Subdivision 6 of the Rule of Practice of the United States Circuit Court of Appeals for the Ninth Circuit you are respectfully notified that the petitioner above named submits herewith his statement of the point on which he intends to rely on the appeal in the above matter, said point being as follows:

Where an alien has been twice convicted of crimes involving moral turpitude, the alien may not be lawfully deported from the United States until he has been afforded an opportunity to apply for and to be heard on an application for a pardon within the meaning, purpose and intent of Section 155, Title 8, United States Code Annotated (Act of February 5, 1917).

You are further respectfully notified that the petition above named designates the following parts of the record in the above matter which he thinks necessary for the consideration of his point on appeal, to-wit:

1. The Petition for Writ of Habeas Corpus;
2. The Order to Show Cause;
3. The Return to the Order to Show Cause;
4. The Order Granting the Motion to Set Aside the Submission, Discharging the Order to Show Cause, Terminating the Restraining Order, and Denying the Petition for Writ of Habeas Corpus;
5. All of the exhibits introduced in evidence before the United States District Court, Southern Division of the United States, Northern District of California, for and on behalf of the petitioner above named.

Dated January 28th, 1948.

/s/ FREITAS, KEATING &
FREITAS,

/s/ JEROME A. DUFFY,
Attorneys for Petitioner.

[Affidavit of service by mail attached.]

[Endorsed]: Filed Jan. 29, 1948.